

## SUBCHAPTER 7. DISCIPLINARY PROCEEDINGS AND PENALTIES (Version 11/19/2012)

### 7:26I-7.1 Purpose

(a) Pursuant to the authority granted at N.J.S.A. 58:10C-5, this subchapter describes the power of the Board to investigate complaints, impose discipline, and suspend and revoke licenses of LSRPs who violate the provisions of N.J.S.A. 58:10C-1 et seq. and to maintain a record of complaints filed against LSRPs and provide the public with information upon request.

(b) Nothing contained in this process shall contravene or in any way contradict the Board's obligation to comply with New Jersey's Open Public Records Act (OPRA) at N.J.S.A. 47:1A-1 et seq.

### 7:26I-7.2 Scope

- (a) This subchapter contains provisions that govern the:
1. Filing of complaints at N.J.A.C. 7:26I-7.3;
  2. Determination to investigate complaints at 7:26I-7.4;
  3. Investigation of complaints at 7:26I-7.5;
  4. Actions of the Board relative to complaints at N.J.A.C. 7:26I-7.6;
  5. Actions of the Board relative to violations at N.J.A.C. 7:26I-7.7; and
  6. Notice and right to a hearing at N.J.A.C. 7:26I-7.8.

### 7:26I-7.3 Filing of Complaints

(a) Any person may file a complaint with the Board upon information and belief that a person has violated N.J.S.A. 58:10C-1 et seq. or any rule, regulation, code of conduct or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any documents or information required to be submitted to the Board or the Department.

(b) The Board may take any action allowed by law, including but not limited to, suspending or revoking a license, if the Board finds that an LSRP is unable to perform the essential functions of an LSRP in accordance with the requirements of N.J.S.A. 58:10C-1 et seq. and the regulations promulgated thereto.

(c) Any standing committee of the Board may make a complaint directly to the Board's Professional Conduct Committee (PCC).

### 7:26I-7.4 Determination to Investigate Complaints

(a) Complaints to the Board shall be accepted by the Board Secretary, who will redact the identities of the subject of the complaint and the complainant, will acknowledge receipt of the complaint to the complainant, and will forward the complaint to the Board's Professional Conduct Committee ("PCC") to review and process.

(b) Board members are obligated to follow the conflict of interest provisions enumerated in the New Jersey Conflict of Interest Law, the State Ethics Commission Regulations and the Board's By-Laws. These provisions require members of the Board to recuse themselves in the event of a conflict of interest.

(c) The PCC shall review every complaint and determine if there are grounds to investigate the complaint.

(d) If the PCC finds that there are grounds for investigation, it shall convene a Complaint Review Team ("CRT") to investigate the complaint.

(e) If the PCC finds that there are no grounds for investigation, it shall refer the complaint to the Board with a recommendation that the complaint should be dismissed.

1. If the Board decides to dismiss the complaint, the Board Secretary shall notify the subject of the complaint and the complainant that the complaint has been dismissed. A summary of the complaint, the reason(s) for dismissal, and the identities of the subject of the complaint and the complainant shall be public record and published on the Board's website.

2. If the Board decides to pursue the complaint despite a recommendation by the PCC to dismiss the complaint, the complaint shall be remanded to the PCC for investigation pursuant to N.J.A.C. 7:26I-7.5.

#### 7:26I-7.5 Investigation of Complaints

(a) A CRT shall be appointed by the Chairman of the PCC to undertake an investigation of each complaint and shall be comprised of:

1. One Board member who is an LSRP;
2. one Board member who is not an LSRP; and
3. the Staff Attorney to the Board.

(b) Upon the convening of a CRT for the complaint, the Board Secretary shall advise the CRT of the identities of the subject of the complaint and the complainant.

1. Each CRT member shall certify that he is free of conflict with the subject of the complaint and the complainant, and can fairly and objectively investigate the complaint.

(c) Following the initial review of the complaint by the CRT, the Board Secretary shall notify the subject of the complaint that a complaint has been received. The notification letter shall be delivered by certified mail or personal service and shall include:

1. the name of the complainant;
2. the complaint form filed by the complainant; and

3. a request for information and a response to the allegations of the complaint.

(d) If the CRT determines that the investigation of the complaint could be undermined by notifying the subject of the complaint, the CRT may decide to delay notification until a later date to be determined by the CRT.

(e) The CRT shall take such actions it deems necessary to thoroughly investigate the allegations of the complaint; including but not limited to:

1. Request, order or subpoena the complainant, the subject of the complaint, and any third parties that may have information regarding the facts of the complaint to submit to questioning or interviews;

2. Request, order or subpoena the subject of the complaint, the complainant and any third parties that may have information regarding the facts of the complaint to produce documents and data records;

3. Request, order or subpoena the subject of the complaint, the complainant, and any third parties that may have information regarding the facts of the complaint to respond to inquiries; and

4. Request, order or subpoena the subject of the complaint, the complainant, and any third parties that may have information regarding the facts of the complaint to make sites, remedial systems, monitoring devices or other equipment available for inspection.

(f) The CRT may review information regarding an LSRP that is the subject of the complaint, including records from other cases that the LSRP was involved in, prior complaints, and disciplinary actions.

(g) Upon completion of its investigation the CRT shall prepare a report to the PCC with the identities of the subject of the complaint and the complainant redacted, which shall contain the following information:

1. A chronology of the complaint;

2. An opinion as to the validity of the complaint;

3. A statement of the CRT's findings including the specific violation(s);

4. The grounds for disciplinary action, if any; and

5. A recommendation, if applicable, as to the type of disciplinary action along with a basis for this recommendation.

(h) The PCC shall review the findings and recommendations of the CRT and present the CRT's report and its own recommendation to the Board in Executive Session.

1. In this Executive Session, the identity of the complainant and the subject of the complaint shall not be disclosed to the Board.

#### 7:26I-7.6 Actions of the Board Relative to Complaints

(a) The Board shall review the findings and recommendations of the CRT and PCC in Executive Session.

(b) The Board shall decide to take one of the following actions with regard to the complaint:

1. Refer the complaint back to the PCC for further investigation of specific issues;
2. Dismiss the complaint with or without admonition with the reasons for the dismissal being placed on the record; or
3. Exercise any of the remedies provided by N.J.S.A. 58:10C-17 and the regulations promulgated thereto.

(c) The identities of the subject of the complaint and complainant shall remain confidential until a determination by the Board pursuant to N.J.A.C. 7:26I-7.6 (b) 2 or 3.

(d) Upon a determination by the Board pursuant to N.J.A.C. 7:26I-7.6 (b) 2 or 3, a summary of the complaint and its disposition, along with the identities of the subject of the complaint and the complainant, shall be placed on the record and made available on the Board's website.

#### 7:26I-7.7 Actions of the Board Relative to Violations

(a) Whenever, on the basis of available information, the Board finds that a person has violated N.J.S.A. 58:10C-1 et seq. or any rule, regulation, code of conduct or order adopted or issued pursuant thereto, or has knowingly made any false statement, representation, or certification in any documents or information required to be submitted to the Board or the Department, the Board may:

1. Suspend or revoke the license of an LSRP pursuant to N.J.S.A. 58:10C-17b or impose another penalty on the LSRP as determined by the Board;
2. Institute a civil action in Superior Court pursuant to N.J.S.A. 58:10C-17c;
3. Issue an administrative order pursuant to N.J.S.A. 58:10C-17d;
4. Bring an action for a civil penalty pursuant to N.J.S.A. 58:10C-17e;
5. Assess a civil administrative penalty pursuant to N.J.S.A. 58:10C-17f;

6. Issue warnings and letters of reprimand with or without a civil administrative penalty;  
or

7. Petition the Attorney General to bring a criminal action pursuant to N.J.S.A. 58:10C-17a(2).

(b) The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

(c) The Board shall consider the following factors in determining the type of disciplinary action, including the amount of monetary penalty if applicable:

1. The actual or potential impact of the violation(s) to public health, safety, and welfare and the environment;

2. The state of mind of the subject of the disciplinary action in committing the violation(s); for example, purposeful, knowing, reckless or negligent;

3. The actual or potential damages or costs incurred by the State of New Jersey or any person as a result of the violation(s);

4. The actions taken by the subject of the disciplinary action to comply with the provisions of N.J.S.A. 58:10C-1 or any rule, regulation, code of conduct or order adopted or issued pursuant thereto that were violated;

5. The actions taken by the subject of the disciplinary action to remedy or mitigate the damages caused by the violation(s);

6. The history of previous disciplinary action against the subject of the disciplinary action;

7. The Board's interest in deterring future noncompliance by the subject of the disciplinary action or others;

8. The public interest; and

9. Any other factors the Board deems pertinent, which shall be set forth in the Notice issued by the Board.

#### 7:26I-7.8 Notice and Right to a Hearing

(a) Notice shall be provided to an LSRP upon the Board's determination to suspend or revoke his license, or impose another penalty. The notice shall be by certified mail or personal service, and shall:

1. Identify the statutory or regulatory basis of the violation;

2. Identify the specific act or omission constituting the violation;
3. Identify the license to be suspended or revoked, or the penalty to be imposed;
4. Assess and order the payment of the costs of any investigation incurred by the Board, and any other State agency;
5. Affirm the right of the violator to a hearing on any matter contained in the notice and the procedures for requesting a hearing; and
6. Enclose a copy of the Board Administrative Hearing Request Checklist.

(b) Notice shall be provided to a person upon the Board's determination to issue him an Administrative Order. The notice shall be by certified mail or personal service, and shall:

1. Specify the provision or provisions of N.J.S.A. 58:10C-1 et al. or the rule, regulation, code of conduct or order adopted or issued pursuant thereto of which the person is in violation;
2. Cite the action which caused the violation;
3. Require compliance with the provision or provisions;
4. Assess and order the payment of the costs of any investigation incurred by the Board, and any other State agency;
5. Give notice to the person of the person's right to a hearing on the matters contained in the notice and the procedures for requesting a hearing; and
6. Enclose a copy of the Board Administrative Hearing Request Checklist.

(c) Notice shall be provided to a person upon the Board's determination to issue him a Civil Administrative Penalty. The notice shall be by certified mail or personal service, and shall:

1. Identify the statutory or regulatory basis of the violation;
2. Identify the specific citation of the act or omission constituting the violation;
3. State the basis for the amount of the civil penalties to be assessed, which shall be not more than \$10,000 for a first violation and not more than \$20,000 for every subsequent violation of the provisions of N.J.S.A. 58:10C-1 et al. or any rule, regulation, code of conduct, or order adopted or issued pursuant thereto;
4. Assess and order the payment of the costs of any investigation incurred by the Board, and any other State agency, and the reasonable costs of preparing and successfully enforcing

a civil administrative penalty pursuant to this Subchapter, in addition to the penalty assessment;

5. Affirm the right of the violator to a hearing on any matter contained in the notice and the procedures for requesting a hearing; and

6. Enclose a copy of the Board Administrative Hearing Request Checklist.

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